

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: County Assessors, County Auditors, and County Treasurers

FROM: Brian E. Bailey, Commissioner *BEB*

RE: Deduction for Residence in Inventory

DATE: June 2, 2011

Purpose

This memorandum provides guidance to county assessors and county auditors with respect to the deduction for residences in inventory added to the Indiana Code by HEA 1046-2011, as a new chapter, IC 6-1.1-12.8, effective July 1, 2011.

I. Qualification as a "Residence in Inventory" for Purposes of the Deduction

For purposes of the deduction, "residence in inventory" means real property that:

1. is not a model residence as defined in IC 6-1.1-12.6-1;
2. has never been occupied; and
3. is a single family: residence, townhouse or condominium unit.

The term "residence in inventory" does not include any of the land on which the residence, townhouse, or condominium unit is located. Moreover, the owner's regular office space may not be considered a "residence in inventory." That said, an owner cannot not lose the deduction simply by using a garage or other space in the real property to store or display promotional materials or as a space to meet with potential buyers.

II. Definition of "Residential Builder"

The term "residential builder" means a person who, in the ordinary course of the person's trade or business, builds single family residences, townhouses, or condominium units.

III. Deduction

In general, a residential builder that is the owner of a residence in inventory is entitled to a deduction in the amount of fifty percent (50%) of the assessed value of the residence in inventory. The deduction applies only to a residence in inventory that is first assessed as a partially or fully completed structure for the assessment date in 2012 or a later year. A deduction for a residence in inventory does not apply, however, for a particular assessment date if the residence in inventory is leased for any purpose for any part of the calendar year in which the assessment date occurs.

IV. Application for Deduction and County Official's Duties

A property owner who qualifies for the deduction must file a statement (a State application form will be developed for this purpose) with the county auditor, in the manner prescribed by the Department of Local Government Finance (Department), containing the following information, verified under penalties for perjury:

1. the assessed value of the real property for which the person is claiming the deduction;
2. the full name and business address of the person claiming the deduction;
3. the complete address and a brief description of the real property;
4. the name of any other county in which the person has applied for a deduction for that assessment date;
5. the complete address and a brief description of any other real property for which the person has applied for the deduction for that assessment date;
6. an affirmation by the owner that the owner is not receiving more than three (3) such deductions, including the deduction for which the owner is applying, either as the owner of the residence in inventory or as an owner that is part of an affiliated group; and
7. an affirmation that the real property has not been leased and will not be leased for any purpose during the term of the deduction.

The application form will be available online at <http://www.in.gov/dlgf/8510.htm> in time for residential builders to claim the deduction for the 2012 assessment date and thereafter.

The assessing official must verify each statement in the application. After the application has been verified, the county auditor must make the deductions and notify the county property tax assessment board of appeals of all approved deductions.

V. Number of Deductions for a Particular Residence

The deduction is available on a particular Residence for a total of not more than four assessment dates as follows:

1. one assessment date for which the Residence is first assessed as a partially completed structure;
2. the assessment date for which the Residence is first assessed as a fully completed structure;
3. the two assessment dates that immediately succeed the assessment date in number 2 above.

VI. Number of Residences for an Assessment Date

Except for members of an affiliated group, a property owner is entitled to a deduction for an assessment date on not more than three (3) Residences in Indiana. The auditor of the county with whom an application for the deduction is filed must immediately prepare and transmit a copy of the application to the auditor of any other county if the property owner that claims the deduction owns or is buying a Residence located in another county. The auditor of the other county must note on the copy of the application whether the property owner has claimed a deduction for the current year for a Residence in that county. That county auditor must then return the copy of the application to the auditor who sent the copy in the first instance.

For example, Mr. Smith owns a Residence in County A and another in County B and is claiming a deduction for the Residence in County A. The Auditor of County A will send a copy of the deduction application to the Auditor of County B, who will note whether Mr. Smith is receiving a deduction for a Residence in County B. The Auditor of County B will then return the noted application to the Auditor in County A.

The aggregate number of deductions claimed for a particular assessment date by the owners of a Residence who are part of an affiliated group may not exceed three (3) deductions. For purposes of the deduction, the term “affiliated group” has the meaning set forth in IC 6-1.1-12.6-1 and means any combination of the following:

- (1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code (except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code must be determined using fifty percent (50%) instead of eighty percent (80%)) or a relationship described in Section 267(b)(11) of the Internal Revenue Code.
- (2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in (1), as determined under the rules adopted by the department of local government finance.

For example, Small Potatoes Builders, along with Big Time Builders, and Homes Are Us formed a business association under the name Build It, Inc. Build It, Inc. owns fifty percent (50%) of the stock of the three companies. Small Potatoes, Big Time and Homes Are Us are part of an affiliated group for determining the number of homes that qualify for the deduction.

VII. Deduction not Permitted for Residence in Allocation Area

A property owner may not receive a deduction with respect to a Residence located in an allocation area as defined in IC 6-1.1-21.2-3. The term “allocation area” refers to an area that is established under the authority of any of the following statutes (IC 6-1.1-39; IC 8-22-3.5; IC 36-7-14; IC 36-7-14.5; IC 36-7-15.1; IC 36-7-30; IC 36-7-30.5) and in which tax increment revenues are collected.

VIII. Limit of One Deduction Per Residence Per Year

A property owner that qualifies for the Residence deduction and another deduction with respect to the same Residence may not receive a deduction under both statutes for the Residence for that year.

IX. Change of Ownership

If the ownership of a Residence changes, and the new owner is a residential builder, the new owner may claim the deduction. The deduction, however, is limited to the assessment dates for which the prior owner qualified. In other words, the deduction assessment dates are those that would have applied had the ownership not changed. The new owner must, at the time of the filing of the sales disclosure form, inform the auditor of the transfer of ownership and of the new owner’s eligibility for the deduction.

The deduction for the Residence for a particular assessment date is terminated if the residence in inventory is sold after the assessment date of that year but before January 1 of the following year to a person who does not continue to use the real property as a residence in inventory. In such case, the county auditor must immediately mail notice of the termination to the former owner, the property owner, and the township assessor or the county assessor if there is no township assessor. The county auditor must remove the deduction from the tax duplicate and must notify the county treasurer of the termination of the deduction.

If you have questions or concerns, please contact Assistant General Counsel Cathy Wolter at 317-233-4361 or cwolter@dlgf.in.gov.